RECEIVED

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	:	**CC Docket No. 93-22**
	:	**RM - 7990**
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	:	
	:	
	:	

COMMENTS OF THE
TELECOMMUNICATIONS SUBCOMMITTEE*
OF THE
CONSUMER PROTECTION COMMITTEE
OF THE
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

*ARIZONA, CALIFORNIA, CONNECTICUT, FLORIDA, IOWA, MAINE, MINNESOTA, NEW JERSEY, NEW YORK, NORTH CAROLINA, OHIO, PENNSYLVANIA. TENNESSEE. VERMONT.

TABLE OF CONTENTS

I. Executive Summary.

Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 to curtail deceptive and unfair practices which have plagued pay-per-call services and to establish a basis

* requiring common carriers to disclose on a pay-per-call telephone bill that telephone service cannot be interrupted or suspended for non-payment of pay-per-call services; and

* requiring common carriers to provide information on pay-per-call services to state law enforcement officials.

The clear purpose of the Act was to establish tough rules to "clean up" the pay-per-call industry and to permit legitimate service providers to grow and prosper. The States' comments are in the spirit of this Congressional mandate and should be adopted.

II. Introduction.

The Telecommunications Subcommittee of the National Association of Attorneys General Consumer Protection Committee[1] ("the States") hereby submits these Comments in response to the Federal Communications Commission's ("the FCC" or "the Commission") Notice of Proposed Rule Making and Notice of Inquiry ("NPRM") issued to implement the provisions of the Telephone Disclosure and Dispute Resolution Act ("TDDRA").

The States commend the Commission's effort to effectuate Congress' primary intent in enacting the TDDRA -- to protect consumers from unfair and abusive pay-per-call services that had become a principal tool of the telemarketing scam artist in the '90's. The FCC's proposals faithfully carry out this mandate in many respects. In these comments, the States support several of the proposals made by the FCC, such as bundling all pay-per-call services on a single "NPA" Code and expanding the prohibition against the use of "collect" pay-per-call services because of their inherently misleading nature. These Comments in several instances also urge that the FCC adopt rules or policies advanced by the Federal Trade Commission ("FTC") or advocated by the States in their comments on the FTC's proposed rules designed to carry out that agency's obligations under TDDRA. The States' comments to the FTC are attached hereto as Exhibit A and

[1]The subcommittee members include the Attorneys General of Arizona, California, Connecticut, Florida, Iowa, Maine, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Vermont, West Virginia and Wisconsin.

incorporated herein by reference.

The TDDRA was a major consumer protection enactment whose clear purpose was to establish tough rules and prohibitions to "clean up" the pay-per-call industry, to protect consumers from abuses and to permit legitimate audiotext service providers to grow and prosper as they provide needed services to customers. Strong, consumer-oriented regulations implementing the Act are a must if these laudable goals are to be obtained. The States' comments set forth below should be adopted to ensure that the FCC regulations satisfy this important standard.

III. The States Support The FCC Suggestion That All Pay-Per-Call Services Be Restricted To One NPA Code.

A. **Designation of Pay-Per-Call Numbers**

Congress has authorized the Commission to designate certain telephone number prefixes and area codes for pay-per-call services. 47 U.S.C. §§228(b)(5), (c)(2). The States encourage the Commission to take advantage of this opportunity and limit all pay-per-call services, interstate and intrastate, to the 900 service NPA code.[2] The States also urge that the

[2]Should the FCC direct that pay-per-call services be provided through a single NPA code, the Commission should consider exempting so-called Mass Announcement Services ("MAS"). MAS typically provides very limited information (such as time of day, weather, sports scores, etc.) through a short (usually under a minute) recorded message at a small (30 cents-40 cents) charge for a call to a local 976 exchange number and are provided pursuant to tariffed rates on file with the local public utility commission. Such services have been in operation for years and are not involved in the fraud and other abuses of consumers perpetrated through area code 900 and other interactive pay-per-call numbers.

Commission designate different office codes to distinguish the specific type of pay-per-call service. These NPA access code and office code requirements would maximize the protections afforded to consumers by enhancing the availability and effectiveness of system-wide blocking or service-specific blocking.

Pay-per-call services remain a relative novelty to consumers. Many consumers still do not distinguish between calling a pay-per-call number and an ordinary telephone call. A recent study conducted by Citizens Research of Silver Spring, Maryland, submitted to the Commission in connection with the NAAG Petition for Clarification and Modification (RM-7990), indicated that consumer confusion regarding pay-per-call services continues, given that half of the respondents said, incorrectly, that a 900 number was free. See NAAG FTC Comments, Exh. 2. While there may be uncertainty over the costs for pay-per-call services, the limitation of interstate and intrastate pay-per-call services to the 900 service access code would best alert consumers that the cost for accessing the service may be in excess of a normal long distance rate.

The limitation of interstate and intrastate pay-per-call services to the 900 service access code will also reduce the steps necessary for a consumer to take advantage of blocking.[3]

---

[3]In certain states consumers must decide which of several blocking options to install to prevent calls to various local exchanges and area codes providing pay-per-call services. For example, in New York local exchanges 394, 540, 550 and 970 are used to provide pay-per-call services and New York Telephone offers four different varieties of blocking.

Consumers have found blocking to be an important tool to control unauthorized use of their telephones for pay-per-call services. Often, the first step that a consumer will take after receiving a telephone bill containing unauthorized pay-per-call charges is to order blocking. Limiting pay-per-call services to the 900 service access code should make it easier to effectuate the blocking. Consumers would not have to worry about pay-per-call services that use office codes such as 540, 576 or 976.[4]

Consumers would also be benefitted by assignment of specific office codes or portions of office codes to the various types of pay-per-call services.[5] The assignment of office codes could allow consumers to block certain pay-per-call services and have access to others. For example, a family may want to use a weather service, but still block out children's or adult-oriented services. Allowing the local exchange carrier to block by type of service would maximize consumer choice.

B. <u>**The FCC Should Assure That All Pay-Per-Call Services, Including Those That Presently Are Attempting To Evade FCC Rules, Are Provided As 900 Number Calls.**</u>

In addition to requiring all traditional pay-per-call

---

[4]It is acknowledged that many telephone companies provide a single blocking service for both 900 and "976" services today. Restricting all pay-per-call services to the 900 NNX designation, however, will <u>ensure</u> that blocking will prevent direct-dial access to all pay-per-call services.

[5]Some States already do this. For example, in New York "chat" or "gab" lines are assigned to local exchange 550.

services to utilize the 900 service access code, the FCC should make a concerted effort to ensure that other services that presently are attempting to evade prohibitions and pay-per-call protections also are carried as 900 numbers. The FCC has already referenced one such example, services that solicit calls from consumers on free or toll lines and then return the call "collect" in order to provide pay-per-call services. NPRM, ¶21, 36. The States have seen instances in which a pay-per-call service provider initiates collect calls to consumers and then charges as much as $99.90 for the "service". Typically the collect call charges are billed by an "alternate operator service" or other telephone service reseller through that reseller's billing and collection contract with a local telephone company. These pay-per-call provider initiated collect calls usually offer services such as credit cards, catalog shopping and "credit cures", and, to a lesser extent, adult-oriented materials or chat lines. The States are urging that the FCC ban and/or prohibit carrier billing for such services. See Section VII, infra.

Another type of audiotext service which, like collect audiotext calls, should be regulated by the Commission is "foreign long-distance" pay-per-call service. Various attorneys general and long distance carriers have received complaints concerning service providers who have utilized foreign telephone numbers to provide "chat" services in a deceptive and misleading way. In two instances, the Pennsylvania Attorney General's

Office and the associated Office of Consumer Advocate have received complaints from individuals who have been induced to call a line that, while vaguely described in the promotional material, turned out to be a chat line. The numbers called were regular long-distance lines to the Dominican Republic in one instance and to Chile in another. While initially it appeared that the services were being provided for reasons other than to provide an audiotext service, it has been reported that the sponsors of the chat lines were receiving payments from the telephone companies in the foreign countries in which the long distance telephone numbers terminated. These payments were being made by the telephone companies from the increased terminating access or settlement payments they received as a result of the additional volume of calls terminating on their telephone numbers.[6]

The extremely troubling aspect of these services is that in no instance were appropriate advertising disclosures provided, no preambles were given to consumers at the initiation of the calls and consumers who had taken steps to limit the ability of their telephone to access pay-per-call services (by imposing a 900 number block) found that their minor children and others were successful in reaching the service notwithstanding these attempts at protection. Moreover, pursuing complaints

[6]The States have also received reports of similar schemes with numbers terminating here in the United States but have not been able to verify these complaints or the manner in which they are operating.

about these services proved to be extremely difficult because the service providers were hard to identify, the terminating telephone company was in a foreign country and the long-distance carriers for the consumers who incurred the charges initially declined to provide any adjustments on the ground that, unlike 900 service, they had no business relationship with the service provider. (To their credit, both carriers involved eventually agreed to make whole or partial adjustments.)

In order to avoid a proliferation of such pay-per-call scofflaws, the FCC should promulgate a rule prohibiting carriers from billing for calls to such services. If carriers are unable to identify such services initially, certainly the carriers may terminate access upon receipt of a complaint by a customer, a law enforcement agency or a commission.

IV. The FCC Should Mandate Pay-Per-Call Service Termination Procedures That Permit Rapid Response to Deceptive or Illegal Services.

The FCC has proposed rules which would require the termination of a pay-per-call service if it does not comply with the TDDRA, the FTC rules issued pursuant thereto or its own pay-per-call rules. Proposed §64.1502. Grounds for termination of a pay-per-call service should include as well non-compliance with state laws, regulations and rules. Many states have enacted specific laws for various aspects of pay-per-call services.[7] Those proscriptions should be the basis for terminating a pay-per-call program in that particular state, as they are today. Carriers have responded to requests from state law enforcement officials to consider termination of services which appear unlawful or are otherwise in violation of state laws, regulations or rules. In several instances, this approach has been effective in quickly halting pay-per-call scams and protecting consumers from financial loss. This extremely effective process should be continued by expanding the basis on which carriers can consider termination to include violation of state law or regulation and to acknowledge that it can be initiated by a notice or request from a state law enforcement official.

The NPRM requests comments concerning the process that should be used by carriers to terminate programs which are operating in violation of law and whether that process should be spelled out in the FCC rules or simply left to the carriers to delineate. NPRM, ¶10,11. Whichever approach is taken, the States urge the Commission to mandate an approach which can produce a quick response to allegations of illegality and abuse and that the rule acknowledge the right of state law enforcement officials to bring to the attention of the carriers for their

[7] See, e.g., California Business and Pro. Code §17539.5, 17539.55.6. In addition, every state has a "little FTC Act" which prohibits deceptive, misleading and unfair acts or practices.

consideration pay-per-call services that are allegedly operating illegally.

V. The FCC Should Mandate A Process of Obtaining Credits or Refunds For Pay-Per-Call Services That Reflects the Present Practice of the Carriers.

The FCC has set forth proposed rules for dealing with claims by customers for credits or forgiveness of pay-per-call services. Proposed §64.1511. The States support the approach adopted by the Commission -- to mandate a credit or refund upon "written or oral protest" that the service is in violation of FCC or FTC regulations or "federal law." To assure that consumers are protected from deceptive or fraudulent charges and to effectuate the purposes of the TDDRA, however, it is crucial that the FCC rules permit adjustment for services that are deceptive, misleading or unfair, is in violation of state law or regulation or where the call was unauthorized. The States, in their Comments to the FTC, have set forth an extensive discussion of the need to include these items as a basis for granting credits to consumers in the context of the rules implementing Title III of the TDDRA. See Comments pg. 18-27. Those Comments, which are set forth as Exhibit A hereto, provide ample justification for an expansive adjustment policy for pay-per-call service bill disputes.

As noted, the present practice of the principal billing entities for pay-per-call services -- carriers and local telephone companies as their agents -- provide liberal adjustments for pay-per-call service charges upon receipt of a claim that the service is deceptive, misleading, unfair, otherwise in violation of state or federal laws, regulations or rules, or was unauthorized. Such a procedure works well today, and is absolutely necessary because, as the FCC is well aware, consumers continue to be relatively uninformed about pay-per-call services. See FTC Comments at 23-24, Exh. 2, 3. Most importantly, the great majority of consumers mistakenly believe that failure to pay 900 number charges can be the basis for suspension or termination of their local or long-distance telephone service. Id.

The States urge that, regardless of the FTC's decision regarding the general billing dispute procedures applicable to all billing entities, the procedure outlined in the States' comments be mandated for carriers subject to the jurisdiction of the Commission. The evidence put forward by the States certainly justifies this adjustment policy for telephone companies providing billing service for pay-per-call service providers.

VI. The FCC Should Mandate That Each Carrier Pay-Per-Call Bill Carry Information About Billing Dispute Procedures and A Statement That Telephone Service Cannot Be Terminated for Non-payment, and Carriers Should Be Prohibited From Making Representations To The Contrary.

The FCC has sought comments concerning the information that should be provided on the bills of carriers when they bill for pay-per-call services, NPRM, ¶37.

The States wholeheartedly endorse the NPRM's suggestion that customers should be informed on their pay-per-call bill that their local and/or long distance telephone service can not be interrupted or suspended for non-payment of pay-per-call service charges. The need and justification for this disclosure is set forth in the States' Comments to the FTC at pp. 27-29.

Moreover, we urge adoption of the FCC's suggestion that the bill should also include a summary explanation of the steps necessary to dispute a pay-per-call service charge. See NAAG FTC Comments at 29.

Further, common carriers should be prohibited from representing or implying that a consumer could lose their local or long distance service for failure to remit payment for pay-per-call or similar service charges.

In light of the evidence of consumer confusion discussed in consumer studies which are Exhibits 2 and 3 to the NAAG FTC Comments, the States request that proposed rule 64.1507 be expanded to include the following prohibition:

No common carrier shall represent or imply that they may disconnect or interrupt in any manner, or order the disconnection or interruption of, a telephone subscriber's local exchange or long distance service as a result of that subscriber's failure to pay interstate pay-per-call service charges or charges for interstate collect calls providing audio information services or simultaneous voice conversation services.

This additional protection is necessary to ensure that not only is a consumer's service not disconnected or interrupted but also that the consumer is not threatened with disconnection or interruption which would result in an identical coercive impact upon the consumers.

VII. The FCC Should Prohibit Carriers From Billing For "Collect" Pay-Per-Call Services.

The FCC has sought comment on whether it should prohibit carriers from billing for interstate collect calls that offer or initiate pay-per-call services. NPRM, ¶36. The States strongly urge that the Commission take this step. The States have received numerous complaints about pay-per-call services -- usually adult-oriented or chat lines -- which attempt to circumvent the FCC consumer protections that have been established for pay-per-call services by resorting to calling consumers "collect." Consumers repeatedly complain that the distance line or is simply placed from a calling list.

Such a prohibition would also be consistent with the FCC's articulated desire (which the States support) to ensure that all pay-per-call programs utilize the 900 service access code (See Section III A, supra).

In the event that the Commission determines that in certain situations collect telephone calls will be permitted for audio information services or simultaneous voice conversation services, the States request that the Commission add an additional consumer protection. Specifically, the States request that in §64.1505 of the proposed rules, common carriers be prohibited from billing for collect calls unless the consumer is clearly and conspicuously notified of the cost per minute prior to accepting the collect call.

VIII. The FCC's Blocking Rule Should Be Modified to Permit the Continuation of State Rules On Blocking Or to Limit the Instances in Which Carriers May Charge A Fee For Imposing A Block.

The FCC has proposed to implement the 900 number blocking provisions of TDDRA by requiring that free blocking must be provided when requested by new subscribers and within 60 days of the issuance of the FCC regulations. The regulations give carriers the discretion to charge a "reasonable" fee for the implementation of blocking at other times. Proposed §64.1508.

The offering of pay-per-call blocking has been mandated in many states by individual state Commissions or state laws. The specific procedures mandated reflect the special circumstances and needs of those individual jurisdictions and reportedly have worked well in providing blocking options to the subscribers. Accordingly, the States urge that the FCC characterize the TDDRA rules as minimum requirements for blocking and to clarify that broader or additional rules imposed by individual states will not be preempted or set aside.

If, notwithstanding the existence of effective state blocking rules, the FCC determines to require a uniform national rule, it should specifically limit the discretion of carriers to charge a fee for the imposition of blocking. Specifically, the FCC rule should prohibit the charging of a fee where a subscriber requests blocking in response to or in conjunction with a complaint about a pay-per-call charge. In our experience it is in response to a questionable or unauthorized pay-per-call charges that most subscribers recognize the need for and request the imposition of blocking. The States submit that no fee could be considered to be "reasonable" in that context.

IX. 800 Number Pay-Per-Call Services Permitted By the FCC Rules Should Be Required Otherwise To Comply With the FCC Pay-Per-Call Rules.

Proposed §64.1501 generally follows the TDDRA's requirements and the previous requests of the States and bans the use of 800 numbers for pay-per-call services except in very limited circumstances. Specifically, 800 numbers may still be used for audiotext service if the calling party "discloses a credit card or other charge card number and authorizes a charge to that credit or charge card number during the call." Id. While we believe that this limited exception is acceptable, it is important that the FCC make clear that a service that is permitted under this rule must, nonetheless, comply with the requirements otherwise imposed upon pay-per-call services, especially the requirements for preambles, price disclosures and the like.

While the use of a credit card as a billing mechanism may justify the permissible use of an 800 number to provide an information service, it does not eliminate the potential that a service provider could use deception or confusion to induce a consumer to provide a credit card number to a service provider under false or misleading pretenses. As the FCC may be aware, numerous telemarketing fraud schemes attempt to secure a credit card number from a consumer under false pretenses and then charge the consumer for products or services without authorization or permission. Requiring information services using 800 numbers to, nonetheless, provide a preamble and price and advertising disclosures as any other pay-per-call would result in needed protections for consumers and ensure that this limited exception does not become an opportunity for fraudulent activity.

X. The FCC Should Require Proof of Service Providers' Tax Exempt Status, Compliance With States' Charity Registration Acts, and the Provider's Authorization to Seek Charitable Contributions Before Allowing Providers to Solicit Charitable Contributions.

The States support §64.1513 of the Commission's proposed rules requiring that any common carrier assigning a telephone number to a service provider that the carrier knows or reasonably should know is engaged in soliciting charitable contributions obtain verification of the tax exempt status of the person or organization for which the contributions are solicited. The verification could most easily be obtained by submission to the carrier of the charitable institutions's IRS Form 990.

To strengthen further the protections of §64.1513, the States propose a number of modifications to the rules. The rule should require that before signing a contract with a service provider, carriers inquire of the provider whether it intends to solicit charitable contributions. This requirement would increase the likelihood that carriers will know of a service provider's intent to solicit charitable contributions before the provider actually begins soliciting. Before carriers allow service providers to begin soliciting, carriers first should have on file the charitable organization's IRS Form 990.

Secondly, carriers should be required to obtain verification that the service provider is authorized to solicit charitable contributions on the charitable organization's behalf. This verification could take the form of a signed statement by the charitable organization acknowledging this authorization.

Thirdly, carriers should be required to obtain verification that the charitable organization is in compliance with the charity registration act of each state in which the service provider intends to solicit. Verification can be in the form of a certified copy of the charitable organization's registration form with the affected states, or by providing a time-stamped copy of the state registration form. This requirement is crucial as, in virtually every state with its own registration act, a charity or its fundraiser is not permitted to solicit donations unless it has fully complied with these requirements.

Furthermore, the rules should make it clear that service will be terminated for programs that solicit in a state in violation of that state's other charitable solicitation laws or rules, or regulations in addition to registration requirements. See Comments, Section IV, (For example, many States require clear disclosure of the professional status of the professional solicitor operating a solicitation campaign.)

These proposed changes should not be difficult to implement. The IRS Form 990 and state registration forms are documents that charitable organizations already should have filed as a matter of law. Requiring submission of copies of these reports to the carriers before allowing service providers to begin soliciting should not be burdensome to the parties affected and the requirement would increase protection from scam artists. In addition to increasing protection for the public, a requirement that carriers obtain verification that a service provider is authorized to seek charitable contributions would protect the charitable organization in whose name the solicitations are conducted.

XI. Common Carriers Should Be Required to Provide Information to Law Enforcement Officials.

Under §64.1509 of the Commission's proposed rules, the States request that common carriers be required to provide:

1) the name and address of the entity leasing and/or operating a pay-per-call service; and 2) the name and address of the entity leasing and/or operating a 1-800 or local number that is advertised or provided to the public. The common carrier would be required to provide the information when requested in writing by any law enforcement entity, including the States. In the past, the States have been provided the name and address of the entity leasing and/or operating a pay-per-call service only in response to a subpoena. The States should be provided this information as expeditiously as possible so that consumer complaints can be resolved and investigations conducted rapidly.[8]

Additionally, the States request that common carriers be required to provide copies of any and all consumer complaints filed against a pay-per-call service with the common carrier.

---

[8]For example, during his investigation of Allied Marketing Group, Inc. the Tennessee Attorney General had to issue subpoenas

The common carrier would be required when requested in writing by a law enforcement entity, including the States, to provide this information without a subpoena. Again, in the past common [illegible]

XII. Conclusion

The States respectfully request that the FCC modify their proposed Rules to implement the TDDRA in the manner described herein.

Dated: April 16, 1993.

Respectfully submitted,

JAMES E. DOYLE
ATTORNEY GENERAL
STATE OF WISCONSIN
TELECOMMUNICATIONS SUBCOMMITTEE
Chairperson
Consumer Protection Committee
National Attorneys
General Association

ERNEST D. PREATE, JR.
ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA
TELECOMMUNICATIONS
SUBCOMMITTEE, Vice-Chairperson
Consumer Protection Committee
National Attorneys
General Association

GRANT WOODS
ATTORNEY GENERAL
STATE OF ARIZONA

DANIEL E. LUNGREN
ATTORNEY GENERAL
STATE OF CALIFORNIA

RICHARD BLUMENTHAL
ATTORNEY GENERAL
STATE OF CONNECTICUT

ROBERT A. "BOB" BUTTERWORTH
ATTORNEY GENERAL
STATE OF FLORIDA

BONNIE J. CAMPBELL
ATTORNEY GENERAL
STATE OF IOWA

MICHAEL E. CARPENTER
ATTORNEY GENERAL
STATE OF MAINE

HUBERT H. HUMPHREY III
ATTORNEY GENERAL
STATE OF MINNESOTA

ROBERT J. DEL TUFO
ATTORNEY GENERAL
STATE OF NEW JERSEY

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

MICHAEL F. EASLEY
ATTORNEY GENERAL
STATE OF NORTH CAROLINA

LEE FISHER
ATTORNEY GENERAL
STATE OF OHIO

CHARLES W. BURSON
ATTORNEY GENERAL
STATE OF TENNESSEE

JEFFREY L. AMESTOY
ATTORNEY GENERAL
STATE OF VERMONT

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL
STATE OF WEST VIRGINIA